

THE MAJORIE FIRM LTD.
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Pro Hac Vice (Per Bk Dkt. 1915 ¶ 153)
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E-Filed on: October 21, 2013

Attorneys for Plaintiff Todd Hansen, as TDI
Representative under an Order entered
by this Court on September 20, 2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re	)	CASE NO. BK-S-09-32824-RCJ (Lead Case)
ASSET RESOLUTION, LLC,)	
	)	Jointly Administered with Case Nos.:
Debtor.	)	BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;
	)	BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;
	)	BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;
	)	BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;
	)	BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;
	)	BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;
	)	BK-S-09-32880-RCJ; BK-S-09-32882-RCJ
)	
	)	Chapter 7
TODD HANSEN, as TDI Representative	)	AP Case No. 13-01071
under an Order entered by this Court on)	
September 20, 2012;	)	NOTICE OF LODGMENT OF
	)	PROPOSED ORDER GRANTING
Plaintiffs,	)	PLAINTIFF'S MOTION FOR
vs.	)	SUMMARY JUDGMENT (Binford)
KENNETH E. SCHMIDT,)	
	)	Date: September 30, 2013
Defendant.	)	Time: 8:47 a.m. PST
	)	Ctrm: RCJ - Courtroom 6
	)	Bruce R. Thompson Fed. Building
	)	400 S. Virginia Street
	)	Reno, NV 89501
	)	Judge: Hon. Robert C. Jones

PLEASE TAKE NOTICE that Todd Hansen, as "TDI Representative" under an order entered
by this Court on September 20, 2012, has lodged with the Court for signing and entry a proposed
Order Granting Plaintiff's Motion For Summary Judgment (Binford). A copy of the proposed order
is attached as Exhibit A to this notice.

1 YOU ARE FURTHER NOTIFIED that pursuant to Bankruptcy Local Rule 9021(b)(2), any
2 disapproving party will have until five (5) business days from receiving the document to serve and
3 file with the Court a detailed statement of objections and an alternate proposal for the document.

4 The Plaintiff hereby informs the Court that, in an effort to avoid another round of briefing
5 concerning the issues of (a) entitlement to the "protective advance" payments and interest thereon;
6 (b) entitlement to and calculation of prejudgment default interest, (c) any calculations of or liability
7 for compounded pre-judgment non-default interest, and (d) attorney's fees, the Plaintiff is limiting
8 the claim for which summary judgment is sought to \$13,726,250.00 plus the per diem of \$2,475.34
9 (as calculated in the proposed order), as long as final judgment is entered in Plaintiff's favor for that
10 amount and such judgment is not reversed in whole or in part in any appeal.
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12 On October 15, 2013, a copy of the proposed order was emailed to counsel for Defendant
13 Kenneth E. Schmidt. On October 21, 2013, Schmidt's counsel indicated through email that he
14 objects to the following sentence (page 6, paragraph 4) in the proposed order: "The Binford PAL
15 Order entered in the 09-32824 Lead Case [AR Bk Doc. 1937] shall apply to the judgment and any
16 collections thereon."
17

18 Dated: October 21, 2013

THE MAJORIE FIRM, LTD

19 By: /s/ Francis B. Majorie
20 Francis B. Majorie

21 Attorneys for Todd Hansen, as TDI
22 Representative under an Order entered
23 by this Court on September 20, 2013
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

<p>In re</p> <p>ASSET RESOLUTION, LLC,</p> <p style="text-align: center;">Debtor.</p> <hr/> <p>TODD HANSEN, as TDI Representative under an Order entered by this Court on September 20, 2012;</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KENNETH E. SCHMIDT,</p> <p style="text-align: center;">Defendant.</p>	<p>) CASE NO. BK-S-09-32824-RCJ (Lead Case)</p> <p>)</p> <p>) Jointly Administered with Case Nos.:</p> <p>) BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;</p> <p>) BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;</p> <p>) BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;</p> <p>) BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;</p> <p>) BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;</p> <p>) BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;</p> <p>) BK-S-09-32880-RCJ; BK-S-09-32882-RCJ</p> <p>)</p> <p>) Chapter 7</p> <p>)</p> <p>) AP Case No. 13-01071</p> <p>)</p> <p>) ORDER GRANTING PLAINTIFF'S</p> <p>) MOTION FOR SUMMARY</p> <p>) JUDGMENT (Binford)</p> <p>)</p> <p>) Date: September 30, 2013</p> <p>) Time: 8:47 a.m. PST</p> <p>) Ctrm: RCJ - Courtroom 6</p> <p>) Bruce R. Thompson Fed. Building</p> <p>) 400 S. Virginia Street</p> <p>) Reno, NV 89501</p> <p>) Judge: Hon. Robert C. Jones</p>
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On September 30, 2013 at 8:47 a.m., the Court heard Plaintiff's motion for summary judgment (ECF No. 14), along with the Plaintiff's statement of undisputed facts (ECF No. 15), the Defendant's opposition and counter-motion to conduct discovery pursuant to Fed. R. Civ. P. 56(d)(2) (ECF No. 20), and the Plaintiff's reply (ECF No. 21). The motion for summary judgment seeks to establish liability for the Defendant's alleged non-payment of a guaranty (the "Guaranty").

1 After considering the foregoing, the record, the law, and the oral arguments presented by counsel at
2 the hearing, the Court ruled as follows:

3 1. The Plaintiff is entitled to partial summary judgment as to liability with respect to
4 \$6,950,000.00, the unpaid principal amount of the Binford Loan (*see* ECF No. 15-1 at 4), plus pre-
5 judgment non-default interest thereon at a rate of thirteen percent (13%) per annum (*See* ECF No.
6 15-2 at 2 (“Interest shall accrue . . . at the rate of thirteen percent (13%) per annum.”)(Promissory
7 Note).

8 2. Defendant has not contested the principal amount of the Binford Loan listed in the
9 summary judgment motion. *See* ECF No. 20 at 10/line 3 (“[T]he loan was funded in an amount [of]
10 \$6,950,000.00”). Nor is there a dispute that the \$6,950,000.00 was funded as of at least April 1,
11 2006. *See* ECF No. 20 at 6/lines 21-22)(“USA failed to fund the last draw of approximately
12 \$900,000.00 which was due to be funded on or about April 1, 2006”).

13 3. The Court’s calculation of the undisputed amount due under the Guaranty is as
14 follows. As of April 1, 2006, the amount funded was \$6,950,000.00. A simple interest rate of 13%
15 per annum on that amount for the seven (7) years between April 1, 2006 and April 1, 2013 equals
16 \$6,324,500.00. An additional six (6) months of interest (from April 1, 2013 until October 1, 2013)
17 equals an additional \$451,750.00 of interest payments due. Simple pre-judgment interest would
18 continue to accrue from October 1, 2013 to the date of the entry of the judgment is \$2,475.34 per
19 day. The undisputed amount due under the Guaranty is therefore \$13,726,250.00 as of October 1,
20 2013 plus pre-judgment interest accruing from October 2, 2013 forward at the rate of \$2,475.34 *per*
21 *diem*.
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25 4. In the Notice of Lodgment of this order, the Plaintiff informed the Court that, in an
26 effort to avoid another round of briefing concerning the issues of (a) entitlement to the “protective
27 advance” payments and interest thereon; (b) entitlement to and calculation of prejudgment default
28 interest, (c) any calculations of or liability for compounded pre-judgment non-default interest, and

1 (d) attorney's fees, the Plaintiff is limiting the claim for which summary judgment is sought to the
2 \$13,726,250.00 plus the per diem of \$2,475.34 (as calculated above), as long as final judgment is
3 entered in Plaintiff's favor for that amount and such judgment is not reversed in whole or in part in
4 any appeal.

5 5. The Court finds that triable issues of fact would exist with respect to the amount of
6 pre-judgment default interest and attorney's fees, if any, which can be awarded against the
7 Defendant under the Guaranty. The Court notes that the amounts calculated in paragraphs 1 through
8 3 above exclude any calculations for pre-judgment default interest, attorney's fees, "protective
9 advance" payments, plus interest (*see* ECF No. 15-1 at 4), and a compounding of interest (as called
10 for by the promissory note) (*see* ECF No. 15-2 at ¶ 1).

11
12 6. The Court will therefore enter a final judgment for \$13,726,250.00 plus the *per diem*
13 interest of \$2,475.34 from October 2, 2013 to the date of entry of the judgment.

14 IT IS THEREFORE ORDERED THAT:

15 1. Plaintiff's motion for summary judgment (ECF No. 14) is GRANTED solely as to the
16 amount of \$13,726,250.00 plus: (a) *per diem* interest of \$2,475.34 from October 2, 2013 to the date
17 of entry of the judgment; (b) all court costs; and (c) post-judgment interest as allowed by 28 U.S.C. §
18 1961.

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20 2. Defendant's counter-motion and opposition to summary judgment (ECF No. 20) are
21 DENIED.

22 3. If the final judgment entered by this Court is appealed by Defendant and overturned
23 in whole or in part, Plaintiff shall be entitled to pursue an award of all sums which may be due under
24 the Guaranty, including without limitation compound interest, default interest, "protective advance"
25 payments and interest, attorney's fees, and any other sums.

26
27 4. Judgment in this case shall be entered in favor of Plaintiff as TDI Representative
28 pursuant to his appointment under NRS645B.340 as the representative of all the holders ("Direct

1 Lenders”) of all of the beneficial direct lender interests in the Guaranty and shall be held by Plaintiff
2 in trust for the benefit of the Direct Lenders according to the proportionate interests held by them
3 with respect to the Guaranty. The Binford PAL Order entered in the 09-32824 Lead Case [AR Bk
4 Doc. 1937] shall apply to the judgment and any collections thereon.

5 5. The Clerk is directed to enter final judgment in favor of Plaintiff against Defendant
6 consistent with this order.

7 6. All costs shall be taxed against Defendant.

8 IT IS SO ORDERED.

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ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

13 Respectfully Submitted By:

14 **THE MAJORIE FIRM LTD.**

15 By: /s/ Francis B. Majorie
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28 Attorneys for Plaintiff Todd Hansen,
as TDI Representative under an Order
entered by this Court on September 20, 2012

LOCAL RULE 9021 DECLARATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the Court's ruling and that:

- ☐ The court has waived the requirement set forth in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

DISAPPROVED AS NOTED IN NOTICE OF LODGMENT

Sean P. Flanagan, Esq.
FLANAGAN, LTD.
7251 W. Lake Mead Blvd., Ste. 300
Las Vegas, Nevada 89128
Telephone: (702) 562-4111
Facsimile: (702) 562-4117
Attorneys for Defendant

Dated: October 21, 2013

THE MAJORIE FIRM LTD.

By: /s/ Francis B. Majorie
Francis B. Majorie

Attorneys for Plaintiff Todd Hansen
as TDI Representative under the Order
entered by this Court on September 20, 2012